

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1943.02
COMPLAINT INVESTIGATOR:	Connie Rahe
DATE OF COMPLAINT:	September 3, 2002
DATE OF REPORT:	October 3, 2002
REQUEST FOR RECONSIDERATION:	yes/revised - November 1, 2002
DATE OF CLOSURE:	November 26, 2002

COMPLAINT ISSUES:

Whether the MSD of Washington Township Schools violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically,

- a. failing to provide accommodations for the student during classroom discussion, and
- b. failing to provide a sound enhancement system during class.

511 IAC 7-17-72(5) by failing to inform a substitute teacher of his or her specific responsibilities related to implementing the student's IEP.

511 IAC 7-27-9(b) by failing to make available to the student with disabilities the same educational programs and services that are made available to nondisabled students, specifically, failing to consider whether honors classes and band participation are available, due to the student's hearing impairment.

FINDINGS OF FACT:

1. The student (the Student) is 11 years of age, is enrolled in grade six, and has been determined eligible for special education and related services under the category of hearing impairment, with communication disorder as a secondary disability.
2. The Student's IEP, dated May 7, 2002, provides for accommodations which include class sound enhancement system and portable voice amplifier outside of the classroom, preferential seating, verbal and visual cueing, directions read or explained to him, the objective that he "will seek help appropriately 90% of the time," and "personal FM system – trial with microlink and explore equipment that would match his hearing aid."
3. The Complainant reported in a series of e-mail letters between the Complainant and the Teacher of Record (TOR), that a substitute teacher did not accommodate the Student's IEP regarding the hearing related need for preferential seating when he stood across the room from the Student during class verbal instructions. The substitute teacher did not respond to the Student's repeated hand-raising, which meets the Student's IEP objective of seeking help. The Student was reprimanded by the substitute teacher for not having initiated the assignment. He replied to the substitute teacher's remarks by saying that he was having a problem, other students laughed, and he responded with embarrassed laughter. The Complainant also reported to the TOR that the classroom teacher, upon returning to school, assigned the

Student four pages of copy work as a punishment for “disrupting the class.” The School acknowledges that no instructions were provided for the substitute teacher to accommodate the Student’s IEP needs.

4. The Complainant asserts that the Student is enrolled in classes that do not have a built-in sound enhancement system available in the classrooms that will accommodate the Student’s digital hearing aid and enable him to participate in class discussions, as required in the Student’s IEP. The School reports that the Student’s classes all have built-in sound enhancement systems that allow the voices of all speakers in the room to be amplified for the Student, except for the classes which individually rotate throughout the semester, and those have an analog FM system that amplifies the teacher’s voice for the Student. The Student’s IEP refers to accommodations of “classroom sound enhancement systems” and “portable voice amplification for instruction outside of the classroom” on two sections of the IEP. Under the *Needs* section listing, “concerns impacting this student’s educational performance” is listed a personal FM system with the need to explore equipment that would match his hearing aid. The current TOR was not aware that the school’s audiologist had recommended that the FM system previously used by the Student not be used because of problems with his adapting to two different systems, as alluded to in the Student’s IEP. Subsequent to the filing of this complaint, the School contacted the audiologist, and the Complainant and School concur that the audiologist has clarified that the Student can use the FM system for one class per day. The Complainant also asserted that the teachers were not trained to use the sound enhancement system in each of the Student’s classes, including the substitute teacher, but they have now been trained, and the School concurs that information is now available in all classrooms for teachers and substitute teachers to enable them to use the available sound enhancement equipment in each classroom.
5. The School reported to the Complainant and Division complaint investigator that all but the health teacher and one other of the Student’s classroom teachers reported having “provisions and information” in their substitute materials regarding the Student’s needs. The two teachers were informed by the building administration on September 9, 2002, to include information pertaining to the Student’s needs, and the teachers have provided written plans for substitute teachers that include those IEP accommodations.
6. The Complainant reports that the Student has pursued a partial curriculum of (math) honors classes since last school year through tests and other qualifying criteria. The Complainant asserts that because of the Student’s hearing impairment requirements for accommodations in the classroom, at the School’s request, he was placed in a 3-teacher block of core classrooms with teachers who were experienced in making accommodations for hearing impaired students. The Complainant further asserts that they were later told by School staff that the Student would only be eligible for a curriculum of all honors classes, instead of the partial honors schedule, while in the 3-teacher block, and that he would have to wait until either the end of the semester or end of the year to reapply for honors classes. Students in the 5-teacher block could reapply at the end of the first grading period of the current school year. The School replied that the general education teacher contacted the Complainant on May 21, 2002, provided the Student’s earned scores, and informed the Complainant of the criteria that the Student would need to meet to qualify for the re-evaluation at the end of the first grading period of the 2002 - 2003 school year. The Coordinator informed the Division that the student could qualify for the partial schedule of only the math honors section if he meets the criteria at the end of the first grading period.
7. The Complainant asserts that the Student’s hearing impairment was not considered when he was assigned to play an instrument that would require a level of hearing acuity beyond the Student’s hearing level, as indicated from recommendations from the School for the Deaf and a local music shop. The School’s band director met with the Student and other students interested in taking band in 6th grade in the spring of 2002 when the Student was in 5th grade. The band director assisted the Student in trying a variety of instruments, one of which was the trumpet. A Music Interest Form was completed by the Student indicating he was most interested in playing percussion. The School, in turn, sent to the Student’s home an Instrumental Music Recommendation Form for the parent’s review and signature. The Instrumental

Music Recommendation Form indicated that the School recommended the Student play the trumpet. The form went unsigned and was not returned at a parent information meeting. According to the Complainant, three School staff members each responded to the Complainant's inquiries that the Student would not be allowed to request a specific group of instruments, and that instruments are assigned to meet the need for a comprehensive array. The School reports that the Student was allowed to choose an instrument, and that the Student chose the exploratory arts rotation in order to have a resource period instead of taking band. In response to the Complainant's concerns regarding the Student's ability to play the trumpet, the School did not show it made an attempt to meet with the Complainant, convene a CCC, or otherwise address the concerns. Therefore, in the interest of getting his 6th grade schedule established on time, the Student signed up for the exploratory arts rotation.

CONCLUSIONS:

1. Findings of Fact # 2 and #3 indicate that, because the substitute teacher was not informed of the Student's needs, the School failed to provide accommodations, as written in the Student's IEP, for preferential seating and verbal explanation of assignments, and failed to respond to the Student's attempts to meet the objective of appropriately seeking help in the Student's health class. Findings of Fact # 2 and #4 indicate that the School failed to provide for the Student's IEP accommodation of **classroom** sound enhancement systems, as opposed to a "**portable** voice amplification for instruction **outside of the classroom**." Therefore, a violation of 511 IAC 7-27-7(a) is found for failing to implement the student's IEP as written.
2. Finding of Fact #5 indicates that the substitute teacher was not properly informed of the specific responsibilities related to implementing the student's IEP that were to be provided in the classroom. But subsequent to the filing of this complaint, the School has provided documentation that the teachers have included the required information in their instructions to substitute teachers. Therefore, while a violation of 511 IAC 7-17-72(5) is found, no additional corrective action is required.
3. Findings of Fact #6 and #7 indicate that the School has made available the opportunity to qualify for one or more honors classes at the end of the first grading period of the current school year while the Student is enrolled in a class which provides additional accommodations for students with hearing impairments. The School has failed to take into consideration the Student's hearing impairment when they assigned an instrument that required more hearing acuity than the Student's capability. However, the School has shown that it subjected the Student to the same process that all prospective 6th graders interested in band go through and that the Student was not treated differently than his nondisabled peers. Therefore, a violation of 511 IAC 7-27-9(b) is not found regarding the availability of honors classes and the band program.

The Department of Education, Division of Exceptional Learners requires the following corrective actions based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

MSD of Washington Township shall:

Convene the case conference committee meeting to review and revise the Student's IEP, with regard to determining the Student's current needs and specific ways to determine that those needs have been met in the following areas:

1. The Student's specific requirements under 511 IAC 7-27-7(a) to provide accommodations for the student during classroom discussion, and to reach agreement of the CCC regarding which sound enhancement system(s) can be utilized during class and outside of the classroom.

A copy of the following shall be submitted to the Division of Exceptional Learners no later than November 22, 2002:

- a) The Student's revised IEP clearly addressing accommodations during class discussions, specific sound enhancement systems to be provided both in and outside of the classroom, and the discussion of accommodations to enable the Student to participate in band and any needed compensatory services; and
- b) Written instructions to each of the Student's teachers regarding the Student's requirements for implementation of his IEP in the general education setting, which shall be provided by the TOR, and receipt acknowledged by each of the Student's teachers signatures.